

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. M-05/09-271
)
 Appeal of)

INTRODUCTION

The petitioner is an heir to the estate of her mother who was a long-term care Medicaid recipient under the Choices for Care program. Petitioner appeals a decision by the Department for Children and Families denying an exemption for undue hardship from estate recovery. The issue is whether the petitioner meets the eligibility criteria for an exemption for undue hardship.

FINDINGS OF FACT

1. The petitioner is the executor and heir of the estate of her mother, who was a long-term care Medicaid recipient.
2. The Department has filed a claim in the amount of \$9,169.88 representing Medicaid expenditures on behalf of the decedent.
3. The decedent's estate consisted mostly of the proceeds of the sale of a coop apartment in New York City in

August 2008 for \$40,000. It appears that about \$21,000 remains in the estate at this time.

4. The petitioner sought an exemption for undue hardship based on improvements she made to her home in Vermont based on her expectation that her mother would live there. Unfortunately, her mother died shortly after she moved to Vermont in April 2008.

5. The petitioner's mother received Choices for Care benefits of \$9,169.88 after she moved to Vermont, having been found eligible after an agreement she made with the Department to place her apartment in New York up for sale. The petitioner concedes that nothing in her mother's agreement with the Department at that time constituted a waiver by the Department of its right to an estate recovery if the petitioner died before the apartment was sold.

ORDER

The Department's decision denying the petitioner's request for an estate recovery waiver is affirmed.

REASONS

The Department is required by both federal and state law to press a claim for repayment of Medicaid funds from the

estates of long-term care Medicaid recipients. 42 U.S.C. § 1396P, 14 V.S.A. § 1204, Medicaid Rule M159.1.

The regulations set out certain defined exemptions to claims against estates "when an heir requests an exemption in writing no later than four months after the publication of notice to creditors of the estate." M159.2. The specific exemptions include:

Loss of assets would produce undue hardship because selling the assets leads to the loss of the decedent's spouse, parents, children or sibling's sole source of income and/or as a result of selling the assets, these individuals would then qualify for public assistance.

M159.2(b).

The petitioner makes no claim or showing that she or any other of her mother's heir's meets the above criteria. Thus, there is no basis for an exemption for undue hardship, and the Board is bound to affirm the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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